

Disciplinary Panels

Practice Note 15

Issued: 2021



Disciplinary Panels

Practice Note 15

The purpose of this Practice Note

This practice note is intended to assist Issuers, Participants and Nominated Advisers to understand the NSX procedures relating to disciplinary proceedings that may have been initiated under the NSX Listing and Business Rules, including appeals emerging from disciplinary proceedings.

This practice note is not a substitute for the Issuer, Participant or Nominated Adviser seeking its own professional advice. There may be differences in each and every case that the Issuer, Participant or Nominated Adviser needs to fully consider as to the ultimate requirements for adhering to the NSX Listing and Business Rules.

The main points

1. Disciplinary process
 2. Panel Selection
 3. Appeal process
 4. Attendance before the Panel
 5. Procedures and Evidence
 6. Decisions of the Panel
 7. Further information
-

Related materials

- NSX Listing Rules
 - NSX Business Rules
 - ASIC Market Integrity Rules (Securities Market) as applicable
 - ASIC Market Integrity Rules (Securities Markets - Capital) as applicable
-

Defined Terms

Appeal Matters means matters, with respect to which a Decision has been made and from which an NSX Client has lodged a formal request for review of those Decision Matters.

Appeal Committee means the Panel appointed by the NSX Board or the Compliance Committee, as delegate of the Board, as is appropriate, which has primary responsibility for dealing with Appeal Matters.

ASIC means Australian Securities and Investment Commission.

Compliance Committee means the committee that has primary responsibility for dealing with compliance related issues affecting the NSX market.

Compliance Officer means the NSX Officer that has delegated authority and is in charge of handling all suspected breaches of the Rules in conjunction with the Compliance Committee.

Decision means any written or verbal determination made by an NSX Officer.

Disciplinary Decision means any Decision made by NSX, its Disciplinary Panels or NSX Officers with respect to Disciplinary Matters.



Disciplinary Matter means any matter with respect to which NSX is of the reasonable view could affect the fair, orderly or transparent operation of the NSX market and/or has been determined to be a breach of the NSX Rules.

Disciplinary Panel means the Compliance Committee.

First Instance Decision means a Decision made by an NSX Officer with respect to a First Instance Matter.

First Instance Matter means any matter which the Compliance Officer, in consultation with Senior Management, considers should be reviewed by either the Compliance Officer or the Compliance Committee.

NSX Clients means Nominated Advisers, listed Issuers, brokers (Participants), and officers of Issuers and Participants.

NSX Officer means NSX Board, committees, committee members, Senior Management, Compliance Officer, employees or contractors.

Qualified Member means NSX Officers or nominated advisers who have, to the satisfaction of the NSX Board, demonstrated the requisite knowledge and experience to be eligible to hear Disciplinary Matters and hand down a Decision.

Qualified Members Register means the register maintained by NSX which contains a list of Qualified Members.

Rules means the Corporations Act 2001 (Cth), the NSX Listing Rules, NSX Business Rules and the ASIC Market Integrity Rules.

Senior Management means Officers appointed by the Exchange.

Warning Notice means a decision by the Compliance Officer and/or the Compliance Committee to issue either a public or private notice indicating the view that the NSX Client is in breach of the Rules.

Guidance

The NSX issues practice notes to promote commercial certainty, reduce costs to business and assist market participants, and we are available to discuss any questions you have in relation to a practice note.

NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, Issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to Issuers and recommends that they consider taking advice from a qualified professional person.



Section 1 – Disciplinary process

1. The procedures provide the procedural framework within which NSX identifies and deals with Disciplinary Matters. As defined in the procedures, a Disciplinary Matter is any matter that could affect the fair, orderly and transparent operation of the NSX market and/or where there has been a breach of the NSX Rules.
2. It is the role of Senior Management to identify Disciplinary Matters. Once a Disciplinary Matter is identified, it is the responsibility of Senior Management to log the suspected breach, if appropriate inform ASIC, obtain appropriate documentation of the suspected breach and, where relevant, obtain further information from the NSX Client.
3. In circumstances where Senior Management are of the view that the Disciplinary Matter requires further action, the Disciplinary Matter may be referred to either the Compliance Officer, their delegate or Compliance Committee. As a Disciplinary Panel, the Compliance Committee has broad powers of investigation and may require NSX Clients to provide such information as is necessary to properly consider the Disciplinary Matter.
4. Where the Compliance Officer, their delegate or the Compliance Committee is of the view that there has been a breach of the Rules they may take whatever steps they consider necessary to ensure the integrity of the market including: deciding to suspend, censure or fine the NSX Clients.
5. In certain circumstances the NSX Client may appeal a decision of either the Compliance Officer, their delegate or Compliance Committee to the Appeal Committee.

Section 2 – Panel Selection

1. The Disciplinary Panel will be constituted by independent Listing and Admission Committee members in the case of an Appeal.
2. A minimum of three members will form the Panel and will hear the Appeal.
3. The Panel may seek advice from Compliance Committee members or other such experts as may be required to resolve a technical matter.

Section 3 – Appeal process

1. As outlined in the procedures, certain decisions may be appealed by the NSX Client. If the NSX Client does decide to appeal, it must lodge appeal documents within 14 days of receiving the formal written decision from the Compliance Officer, the delegate or Compliance Committee.
2. The appeal documents must contain a description of the decision with respect to which the NSX Client is seeking review, a statement outlining the reasons why the NSX Client considers that the decision is an appealable decision under the procedures and finally a statement outlining the NSX Client's grounds for appeal.
3. There is only a limited right of appeal from Compliance Officer and Compliance Committee Decisions. Decisions of an interim nature cannot be appealed. This includes decisions of a procedural nature, such as whether the Compliance Officer or Compliance Committee will hear the matter. Only decisions which decide the actual outcome of the Disciplinary Matter are appealable.



4. Furthermore, the appeal must not otherwise be spurious, vexatious or affect the fair, orderly or transparent operation of the NSX Market. Finally, there are a number of specific decisions from which an NSX Client cannot appeal, these are enumerated in the procedures.

Section 4 – Attendance before the Panel

1. NSX Clients or their representative have the option to attend the Disciplinary Panel and there is provision for Disciplinary Matters to be heard by way of written submissions.

Section 5 – Procedures and Evidence

1. Disciplinary hearings are to be conducted with as much expedition as a proper consideration of the matters before the Disciplinary Panel permit to provide fairness, efficiency and cost effectiveness to the NSX Clients.
2. The Panel will allow the production by NSX Clients of whatever evidence the Panel considers of probative value.
3. The Panel may request additional documents¹ from NSX Clients, within the limits of the NSX Rules, that are directly relevant to the matter, that will aid the proceedings and aid the decision making of the Panel.

Section 6 – Decisions of the panel

1. Decisions of the Panel will be by majority voting, will be binding and there will be no further appeal.
2. Decisions of the Panel are final.
3. The Panel will record minutes of the Decision.
4. If appropriate, the Decision may be published on the market announcements platform in accordance with the NSX Rules.

Section 7 – Further Information

1. Further information can be obtained by contacting:

Market Operations

National Stock Exchange of Australia Limited

Email: trading@nsx.com.au

¹ Documents are usually limited to non-privileged documentation in relation to the appeal matter.